U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship
and Immigration
Services
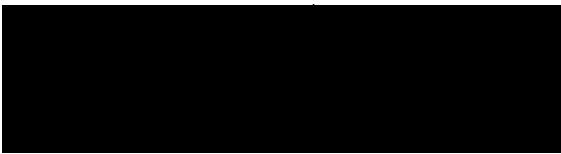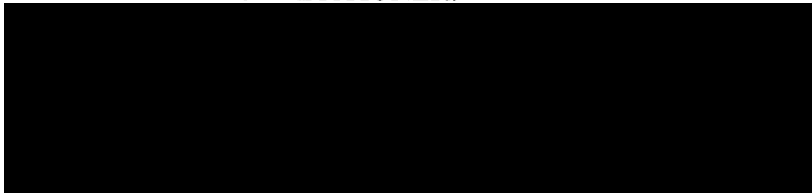
FILE:          EAC 02 044 54419        Office: VERMONT SERVICE CENTER        Date:

IN RE:        Petitioner:
              Beneficiary:

MAR 02 2004

PETITION:    Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section
             203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to
the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

www.uscis.gov

**DISCUSSION:** The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is an information processing, manufacturing, sales, and service company. It seeks to employ the beneficiary permanently as a production manager. As required by statute, the petition is accompanied by an individual labor certification approved by the Department of Labor. The director determined that the petitioner had not established that the beneficiary met the petitioner's qualifications for the position as stated in the labor certification as of the petition's priority date.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

Section 203(b)(3)(A)(ii) of the Act provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

A labor certification is an integral part of this petition, but the issuance of a labor certification does not mandate the approval of the relating petition. To be eligible for approval, a beneficiary must have all the training, education, and experience specified on the labor certification as of the petition's priority date. *Matter of Wing's Tea House,* 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the petition's priority date is November 29, 2000.

The Application for Alien Employment Certification (Form ETA 750) indicated that the position of production manager required a Bachelor's degree in Computer Science or Mathematics and two years of experience in the job offered, or two years of experience in the related occupation of project manager.

The director determined that the petitioner had not established that the beneficiary had the required Bachelor's degree and denied the petition.

On appeal, counsel argues that:

> The only limitation imposed by the regulation that the Service cites is that the case is not approvable under the third preference "degreed professional" category unless the degree is documented as the regulation specifies. However, the employer seeks approval under the third preference category as a "skilled worker" position, not under the "degreed professional" category. Therefore, the Service's conclusion that [the beneficiary] did not qualify for the position at the time of filing is incorrect – he qualified for the job under the employer's requirements (including the equivalent of a Bachelor's degree) as well as qualifying under the skilled worker category.

The record contains an educational evaluation from the Trustforte Corporation, which states that the beneficiary has "completed one year of academic studies in computer software, computer applications, and

related subjects. The foregoing courses are analogous in content, difficulty, and duration to classes offered in bachelor's-level programs at U.S. universities." The evaluation further states that the beneficiary has "attained the equivalent of a Bachelor of Science Degree in Computer Science from an accredited US institution of higher education in the United States."

Despite counsel's arguments, CIS, formerly INS, will not accept a claim of degree equivalency when a labor certification plainly and expressly requires a candidate with a specific degree. As noted previously, the labor certification, at block 14, specifically requires a Bachelor of Science degree in Computer Science or Mathematics as the minimum level of education needed to perform the job duties. The labor certification does not provide for a degree equivalent as a minimum level of education, regardless of whether the equivalency is based on work experience, training, or a combination of lesser degrees.

The issue here is whether the beneficiary met all of the requirements stated by the petitioner in block #14 of the labor certification as of the day it was filed with the Department of Labor. The petitioner has not established that the beneficiary had a Bachelor's degree in Computer Science or Mathematics on November 29, 2000. Therefore, the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**Order:** The appeal is dismissed.